

## The law, the courts, and sexual and reproductive rights

### *Lessons from the first cycle of the Universal Periodic Review: from commitment to action*

The Universal Periodic Review (UPR) is a unique mechanism established by the UN General Assembly in 2006. It facilitates the review of the fulfilment by each UN Member State of its human rights obligations and commitments, with its full involvement in the process, and with the objective of improving the human rights situation on the ground. The outcome of the review of each country is a set of recommendations made to the State under review by reviewing States, the response of the State under review to each recommendation, as well as any voluntary commitments made by it during the review. After the review, the State under review has the primary responsibility to implement the UPR outcome. It may do so with the assistance of the UN system and participation of civil society, national human rights institutions and other relevant stakeholders. The UPR is intended to complement and not duplicate or replace the work of other human rights mechanisms such as treaty bodies or special procedures. The UPR is largely considered a successful mechanism for its ability to bring to the fore human rights concerns in each country, to empower civil society, including marginalized and excluded groups, to claim their human rights, and to bring substantial pressure on States to meet their human rights obligations. Due to its comprehensive scope, covering the full range of human rights, the UPR provides a valuable opportunity to contribute to the realization of sexual and reproductive health and rights (SRHR). This publication aims to explore the potential role the UPR mechanism can play in advancing the realization of SRHR at the global, regional and country levels. It assesses the considerable attention the UPR has given to these issues during its first cycle and identifies ways to enhance this level of attention through all stages of the UPR process.<sup>1</sup>

1. [http://www.unfpa.org/rights/docs/Final\\_UNFPA-UPR-ASSESSMENT\\_270814..pdf](http://www.unfpa.org/rights/docs/Final_UNFPA-UPR-ASSESSMENT_270814..pdf).

### *Global health law and justice*

A new publication highlights the potential of law and global governance to dramatically improve health and well-being. It summarises current evidence about how law is applied for global health and justice, and suggests areas for improvement. The solution to major global health challenges lies in transforming global health law and global governance because of their potential to dramatically improve health and reduce inequalities. The paper ends with a call for a Framework Convention on Global Health.<sup>1</sup> However, the challenge with such a Framework would be getting global agreement on rights, especially relating to the challenges in ensuring that universal access to sexual and reproductive health and rights make it explicitly into the post-2015 agenda. Consideration of rights must move beyond redress for violations to using law to prevent violations from occurring in the first place. Examples include ensuring that health services do not discriminate in access to contraception afforded to particular groups, such as children, ethnic minorities, people living with HIV, sex workers and transgender people. Integrating human rights into policy-making processes can help to ensure non-discriminatory and good quality health facilities and services and put accountability mechanisms in place. Including legal rights in global monitoring frameworks can ensure targets consider populations that are marginalised or discriminated against.<sup>2</sup>

1. Gostin LO. *Global Health Law*. Boston: Harvard University Press, 2014. <http://www.hup.harvard.edu/catalog.php?isbn=9780674728844>.
2. Gruskin S. Global health justice. *Lancet* 2014;384(9947): 945–6. Doi: [10.1016/S0140-6736\(14\)61616-0](https://doi.org/10.1016/S0140-6736(14)61616-0).

### *Global databases on health, human rights and the law*

Three databases have been launched in recent years that provide information on law, human rights, and health. LawAtlas, the Global Health and Human Rights database, and the Doctors Who Torture Accountability Project each put

online legal information relevant for policy analysis, human rights research, and advocacy. LawAtlas<sup>1</sup> is a software system designed specifically for scientifically coding and publishing legal data. It has both a public website where visitors can learn about the law and trends over time (and download the underlying legal data), and the Workbench, a web-based software system that allows researchers to collect and code legal data and publish it online. To date, more than two dozen sets of data have been uploaded, including data on laws related to anti-bullying, HIV criminalisation and nurse practitioner prescribing. The Global Health and Human Rights Database<sup>2</sup> is a free online database of case law, national constitutions, and international instruments from around the world relating to health and human rights, featuring information from more than 80 countries in 25 languages and covering health-related rights issues, including sexual and reproductive health, health systems and financing and environmental health. The core of Doctors Who Torture is a compilation of documents discussing the status of physician-supervised torture around the world. Supporting documents are given for each country and for each punishment. The website also contains a library of references for courts or medical associations to use during the course of holding hearings.

1. Law Atlas. <http://lawatlas.org/welcome>.
2. Human Rights Watch Global Health and Human Rights database. <https://mail.hrw.org/owa/redir.aspx?C=3aae58d750f6444db790e578b9fe32bc&URL=http%3a%2f%2fwww.globalhealthrights.org%2f>.
3. Doctors Who Torture Accountability Project. <http://doctorswhotorture.com/>.
4. Amon JJ. Law, human rights, and health databases: a roundtable discussion. *Health and Human Rights* 2014;16(2). <http://www.hhrjournal.org/2014/09/11/law-human-rights-and-health-databases-a-roundtable-discussion/>.

### ***Sexual rights at the Human Rights Council***

A number of significant sexual and reproductive health resolutions were adopted at the 27th session of the UN Human Rights Council in September 2014. A resolution on preventable maternal mortality and morbidity includes references to safe abortion and post-abortion complications and to reproductive rights. A follow-up report is to be submitted by the UN High Commissioner

for Human Rights in September 2016. A resolution on sexual orientation and gender identity was adopted by a vote of 25 in favour, 14 against and seven abstentions. The Organization of Islamic Cooperation, represented by Pakistan, unsuccessfully opposed “controversial” notions being introduced. The UN High Commissioner for Human Rights has been asked to share good practices and ways to overcome violence and discrimination in a report to the Council in June 2015. A resolution on intensifying global efforts and sharing good practices to effectively eliminate female genital mutilation was adopted without a vote and a report on good practice is also to be submitted in June 2015.<sup>1</sup>

1. Sexual Rights Initiative. HRC27 wrap up, 2 October 2014. <http://sexualrightsinitiative.com/2014/hrc/hrc-27-session/sexual-rights-hrc27/>.

### ***State obligations to prevent and eliminate harmful practices***

For the first time, two UN human rights expert committees – the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of the Child (CRC) – have set out countries’ obligations to tackle harmful practices carried out on women and girls. The Committees’ joint recommendations to States detail criteria for determining causes and manifestations of harmful practices. The two Committees condemn the way States condone practices in the name of social or religious customs or “protecting” the honour of women, children and their families. In addition to female genital mutilation, crimes committed in the name of so-called honour, forced and child marriage, and polygamy, recommendations also highlight other harmful practices, such as virginity testing, binding, widowhood practices, infanticide, and body modifications, including fattening and neck elongation. The Committees also pay attention to practices such as women and girls undergoing plastic surgery to conform to social norms of beauty.<sup>1</sup>

1. United Nations Office of the High Commissioner for Human Rights. UN human rights experts set out countries’ obligations to tackle harmful practices such as FGM and forced marriage. Press release, 5 November 2014. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15250&LangID=E>.

### ***OHCHR/UN Women/UNAIDS/UNDP/UNFPA/UNICEF/WHO statement on involuntary sterilisation***

This UN interagency statement reaffirms that sterilisation as a method of contraception should be available, accessible, acceptable, of good quality, and free from discrimination, coercion and violence. However, in some countries, people living with HIV, people with disabilities, indigenous peoples, ethnic minorities, and transgender and intersex people are sterilised without their full, free and informed consent and others may also be at risk of coercive sterilisation, such as those with drug dependence. Laws, regulations, policies and practices should ensure that the provision of procedures resulting in sterilisation are based on the full, free and informed decision-making of the person concerned. The statement highlights guiding principles for the prevention and elimination of coercive sterilisation and provides recommendations for legal, policy and service delivery actions. It is based on scientific evidence, draws on lessons learnt from historical and contemporary practices, and is anchored in international human rights norms and standards.<sup>1</sup>

1. World Health Organization. Eliminating forced, coercive and otherwise involuntary sterilization: an interagency statement: OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. Geneva: World Health Organization, 2014. [http://www.who.int/iris/bitstream/10665/112848/1/9789241507325\\_eng.pdf?ua=1](http://www.who.int/iris/bitstream/10665/112848/1/9789241507325_eng.pdf?ua=1)

### ***Sexual and reproductive rights and justice***

With the current focus on adoption of rights-based approaches to health, there is a need to critically examine how rights are actively appropriated and re-worked in different contexts, and for whom, and how notions of rights complement or compete with local notions of justice.<sup>1</sup> A review of health activism in Tamil Nadu from the 1980s onwards demonstrates how activism that explicitly made the connection between the health of the individual body and mobilising for a more just social order has had the greatest continuity and reach. For example, getting people to understand that uterine prolapse is linked to the gendered expectation that women can undertake heavy manual labour immediately after childbirth.<sup>2</sup> In contrast, an HIV project in South Africa has documented its struggle to translate universal rights

talk into practice. The Entabeni Project sought to increase rural women's right to access HIV services. Despite short-term health-related successes, the women in the project had little interest in directly challenging male power. Poverty was a greater preoccupation; the local traditional chief insisted the project should remain "apolitical", and project funders prioritised numbers of women reached over a gender empowerment orientation. In the absence of a marginalised group who are willing to assert their rights – and a context in which powerful people are willing to support their claims – rights may be a blunt tool for HIV-related work with women in deeply oppressive and remote rural communities.<sup>3</sup>

1. Unnithan M, Pigg SL. Sexual and reproductive health rights and justice – tracking the relationship. *Culture, Health & Sexuality* 2014;16(10):1181–7. Doi: [10.1080/13691058.2014.945774](https://doi.org/10.1080/13691058.2014.945774).
2. Ram K. Re-activating modern traditions of justice: mobilising around health in rural Tamil Nadu, South India. *Culture, Health & Sexuality* 2014;16(10):1188–1200. Doi: [10.1080/13691058.2014.895046](https://doi.org/10.1080/13691058.2014.895046).
3. Campbell C, Nair Y. From rhetoric to reality? Putting HIV and AIDS rights talk into practice in a South African rural community. *Culture, Health & Sexuality*, 2014; 16(10):1216–30. Doi: [10.1080/13691058.2014.930180](https://doi.org/10.1080/13691058.2014.930180).

### ***Violation of national sterilisation policy leads to women's deaths, India***

The Population Foundation India have issued a statement regarding the deaths of 13 young women at a sterilisation camp in Chhattisgarh State, caused, it is believed, by unsafe antibiotics and services provided in very poor conditions. The Population Foundation India say the deaths highlight the fact that the government's target-free approach to sterilisation is not yet a reality. Although the word "target" was removed from India's Population Policy in 2000, it has been replaced by "expected level of achievement", i.e. health staff receive awards and monetary compensation according to the number of women that they round up for sterilisation. The Foundation calls for the focus to be on quality of care, with strict adherence to the Ministry of Health and Social Welfare's Standard Operating Procedures for Sterilisation Services in Camps. The guidelines specify that one doctor should do no more than 30 sterilisations with three laparoscopes in one day and that camps must be conducted in government health facilities.

The doctor in Chhattisgarh, though described as an expert, is said to have performed 83 operations in less than five hours in a former private hospital that had been closed, without basic life-saving equipment. The Foundation's statement also calls on the government to make available a wide range of reversible contraceptive methods, give women clear and adequate medically accurate information, including on benefits and risks, so that they can choose the method that they want to adopt and give informed consent. Above all, however, the issue of improving quality of care in line with government regulations is stressed.<sup>1</sup>

1. Population Foundation India. Statement on Chhattisgarh sterilisation deaths, 13 November 2014. <http://www.populationfoundation.in/sites/default/files/PFI%20media%20statement%20%20-%2013th%20November%202014.pdf>.

***HPV vaccination not responsible for deaths of six girls in India but research ethics criticised and litigation recommended for greater accountability in clinical trials***

In 2009, almost 24,000 girls in India were enrolled in an HPV vaccination programme in Andhra Pradesh and Gujarat states. In April 2010, the Government of India suspended the programme after activists reported the deaths of six girls and questioned the research rationale, ethics and informed consent procedures. The court concluded that the deaths were unrelated to the HPV vaccine, which is being rolled out safely around the world. However, the case highlights lack of accountability in clinical trials in India. The committee investigating the deaths found that the process of informed consent was inadequate, with consent forms being signed by school principals on behalf of children, and the monitoring system did not report all adverse events. They criticised the length of time it took for the deaths to be made public, and the fact that they were not investigated by an independent body. When the findings did not lead to sanctions, activists petitioned the Supreme Court, highlighting the legal obligations of the organisations responsible for the clinical trials and calling on the court to clarify what it means, for example, to verify that informed consent is taken properly or a proper monitoring system is implemented, and to order the European and American organisations and companies involved to comply. In August 2013,

a Parliamentary committee severely criticised the clinic research organisation, PATH, concluding that its sole aim had been to promote the commercial interests of HPV vaccine manufacturers. Given wide disparities in access to health care in India, a lack of adherence to the relevant standards for the protection of clinical trial test subjects is deeply discriminatory. Pharmaceutical companies and contract research organisations may be guilty of violating human rights by not taking adequate responsibility to secure the rights of research participants. It is estimated that about half the world's clinical trials are now contracted out to more than 1,100 contract research organisations, most frequently to Brazil, China, India, or Eastern Europe.<sup>1</sup>

1. Terwindt C. Health rights litigation pushes for accountability in clinical trials in India. *Health and Human Rights* 2014;16(2). <http://www.hhrjournal.org/2014/11/06/health-rights-litigation-pushes-for-accountability-in-clinical-trials-in-india/>.

***Abortion laws and other reproductive rights policies and data globally***

A review of States' population policies and laws concludes that, between 1996 and 2013, the percentage of governments permitting abortion increased gradually for all legal grounds, except to save a woman's life which remained at 97%. However, policies remain restrictive in many countries. Only about one-third of countries permitted abortion for economic or social reasons or on request. Governments in developed regions were more than four times as likely to permit abortion for economic or social reasons (80%) as those in developing regions (18%). Out of 145 countries with available data in 2012, governments of 87 countries (60%) had implemented concrete measures to improve access to safe abortion services in the past five years. A growing number of governments have adopted policies to raise fertility rates, rising from 14% in 1996 to 27% in 2013. Governments have increasingly adopted policies to reduce adolescent birth rates. Fertility rates are significantly higher in countries with restrictive abortion policies, with an adolescent birth rate in countries with restrictive abortion policies at around three times greater (69 births per 1,000 women aged 15–19 years) than in countries with liberal abortion policies (24 births). Countries with restrictive abortion policies have much higher unsafe abortion

rates than those with liberal policies (26.7 compared with 6.1 unsafe abortions per 1,000 women aged 15–44 years) and higher levels of maternal mortality (223 compared with 77 maternal deaths per 100,000 live births).<sup>1</sup> The report is accompanied by a fact sheet<sup>2</sup> and wall chart with 2014 information on government policies on reproductive health issues, including fertility, family planning, abortion and maternal mortality, government measures on increased access to sexual and reproductive health services, on child and forced marriages, and the latest estimates of adolescent and total fertility, unmet need for family planning, maternal mortality ratio, and other selected indicators.<sup>3</sup>

1. United Nations, Department of Economic and Social Affairs, Population Division. Abortion policies and reproductive health around the world, 2014. <http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf>
2. United Nations, Department of Economic and Social Affairs, Population Division. Population Facts, August 2014. [http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts\\_2014-1.pdf](http://www.un.org/en/development/desa/population/publications/pdf/popfacts/PopFacts_2014-1.pdf)
3. United Nations, Department of Economic and Social Affairs, Population Division. Reproductive health policies 2014 wall chart, 2014. [http://www.un.org/en/development/desa/population/publications/pdf/policy/ReproductiveHealthPolicies2014\\_WallChart.pdf](http://www.un.org/en/development/desa/population/publications/pdf/policy/ReproductiveHealthPolicies2014_WallChart.pdf)

### ***Operationalising the definition of unsafe abortion***

The World Health Organization's (WHO) definition of unsafe abortion – a procedure for terminating a pregnancy performed by persons lacking the necessary skills or in an environment not in conformity with minimal medical standards, or both – is widely used but inconsistently interpreted. Interpretation of unsafe abortion should be linked to the most recent technical guidance on the management of complications of induced abortion. The definition does not predetermine who should be considered a safe abortion provider or what the appropriate skills or standards for performing abortions should be. It is assumed that interpretations will evolve in line with evidence-based recommendations by WHO.

For example, induced abortions provided at primary care level and by suitably trained non-physician health care providers have been shown

to be safe. Forthcoming guidelines on this evidence, currently in preparation, clarify who can safely provide an abortion. Unsafe abortions are, by definition, risky, but the risk is extremely low if an evidence-based method is used to terminate an early pregnancy. Risk is highest if a dangerous method is employed clandestinely to terminate an advanced pregnancy. The immediate determinants of the risks of an induced abortion, such as method used and length of pregnancy, are influenced by other social determinants, such as legal restrictions, availability of safe abortion services, level of abortion-related stigma, degree of women's access to abortion information and the woman's age and socioeconomic status. Illegal abortion is not synonymous with unsafe abortion. In the longer term, global consensus will be needed on the broader indicators used to assess the provision of safe abortion in line with WHO guidance, which can capture access, equity, quality of care and access to post-abortion contraception.<sup>1</sup>

1. Ganatra B, Özge Tunçalp O, Johnston HB, et al. From concept to measurement: operationalizing WHO's definition of unsafe abortion. Bulletin of World Health Organization 2014;92:155. Doi: <http://dx.doi.org/10.2471/BLT.14.136333>.

### ***Position on abortion law and impact on sexuality of laws in Muslim-majority countries***

A systematic analysis of Islam's position towards abortion examined authoritative religious texts (the Quran and Sunnah) and drew on other information sources, including from contemporary fatwas, interest groups and transnational Islamic organisations. Islamic jurisprudence does not "encourage" abortion, but there is no direct prohibition in religious texts. The positions of religious scholars on abortion vary. Many permit abortion in particular circumstances and at specific stages of pregnancy. There is some consensus that abortion is most acceptable when the life of the woman is at risk and the pregnancy is less than 120 days. Views differ significantly in regards to circumstances in which abortion is acceptable, such as the woman's physical or mental health, fetal impairment, rape, or social or economic reasons. In 18 of the 47 Muslim-majority countries, abortion is not allowed under any circumstances other than saving the life of the woman. However, there

is substantial diversity between countries, and 10 Muslim-majority countries allowed abortion on request. It may be possible to advocate for more lenient abortion laws by highlighting the lenient interpretations that exist in certain Islamic legal schools and emphasising significant Muslim leaders who support abortion.<sup>1</sup>

The impact of living under Muslim law on women's sexuality and gendered experiences is covered in a range of articles on culture and sexuality in the Muslim world. Articles cover issues such as sexuality and politics in Indonesia, rape law reform in Sudan, marriage laws and divorce in Zanzibar, honour crimes in the Muslim world and women's control over sexual health in Pakistan.<sup>2</sup>

1. Shapiro GK. Abortion law in Muslim-majority countries: an overview of the Islamic discourse with policy implications. *Health Policy and Planning* 2014;29(4):483–94. Doi: <http://dx.doi.org/10.1093/heapol/czt040>.
2. Hélie A, editor. Sexualities, Culture and Society in Muslim Contexts. Dossiers 32–33. *Women Living Under Muslim Laws*, 17 July 2014. <http://www.wluml.org/resource/dossier-32-33-sexualities-culture-and-society-muslim-contexts>.

### ***Polish doctors not permitted to deny legal abortion***

In May 2014, religious fundamentalists and bishops launched the Declaration of Faith of Medical Doctors and Students on Human Sexuality and Fertility, which was signed by around 3,000 doctors and students in the first two months. It stated that contraception, abortion, in vitro fertilisation and sex reassignment are unacceptable and sex must only occur within (heterosexual) marriage. The declaration also said that any doctor can deny treatment or procedures which are unacceptable to him or her. In July, a pregnant woman, whose fetus had an incurable illness and severe malformation, was denied abortion by a doctor in a public hospital. The doctor delayed antenatal tests until it was too late to terminate the pregnancy legally. The baby died ten days after birth. A penalty was imposed on the hospital, on grounds of violation of patients' rights and a failure to follow current legal provisions. The national Ombudsperson recommended that Polish provisions on conscientious objection be amended, so

that doctors claiming conscientious objection can no longer deny women their rights.<sup>1</sup>

Proposals from the anti-abortion Committee for Legislative Initiative "Stop Paedophilia" seek to "protect children from depravation of so-called sex educators". They call for imprisonment of people who publicly promote or approve "activities of a paedophilic nature" and people who publicly popularise, or enable, sexual activity of under-age adolescents. The proposed legislation has collected 250,000 signatures and the first reading will take place before the end of 2014.<sup>2</sup>

1. Abuse of conscientious objection in Poland: short summary of Doctor Chazan case. Polish Federation for Women and Family Planning, 29 July 2014. <http://www.federa.org.pl/english/1354-abuse-of-conscientious-objection-in-poland-short-summary-of-doctor-chazan-case>.
2. Movement against sexuality education in Poland proposes legislative initiative. ASTRA CEE Bulletin, September 2014. [http://www.astra.org.pl/pdf/bulletin/ASTRA\\_CEE\\_Bulletin\\_134.pdf](http://www.astra.org.pl/pdf/bulletin/ASTRA_CEE_Bulletin_134.pdf).

### ***Replacing myths with facts: sex-selective abortion laws in the US***

This report examines the recent proliferation of laws banning sex-selective abortion in the United States. Eight states have enacted laws prohibiting sex-selective abortion and 21 states and the federal government have considered such laws since 2009. The laws prohibit abortion if sought based on fetal sex and provide for both criminal and civil penalties in most cases. The report identifies six inaccuracies commonly associated with sex-selective abortion laws in the United States. It challenges the myth that laws banning sex-selective abortion are an effective way to prevent sex selection or reduce gender-based discrimination. The evidence shows that there is a strong anti-abortion presence and sentiment behind such laws. Analysis of US birth data shows that legislation has not altered sex ratios five years after introduction in those states where such laws are in place. Findings from this analysis show that, rather than exhibiting a preference for sons, Asian Americans actually give birth to more girls than White Americans on average. The report will be used in legislative advocacy in the US Congress and state legislatures where laws banning sex-selective abortion are being considered.<sup>1</sup>

1. Citro B, Gilson J, Kalantry S, et al. Replacing myths with facts: sex-selective abortion laws in the United States, June 2014. Chicago: International Human Rights Clinic, University of Chicago Law School, with National Asian Pacific American Women's Forum, Advancing New Standards in Reproductive Health. <https://ihrclinic.uchicago.edu/sites/ihrclinic.uchicago.edu/files/uploads/Replacing%20Myths%20with%20Facts%20-%20Sex-Selective%20Abortion%20Laws%20in%20the%20United%20States.pdf>.

### ***Compulsory abortion counselling violating women's rights, Hungary***

A study of 101 women seeking abortion in Hungary in April 2014 found violations in the provision of compulsory counselling – a precondition for obtaining abortion – in more than one in ten cases. The compulsory counselling consists of two sessions. The first session has to be “in the interest of keeping the fetus”, including information on the “dangers of abortion” and its effects on later pregnancies and the second, after a minimum three-day waiting period, is supposed to be only informative and administrative. Of the 101 respondents, 13% experienced manipulation, blaming or emotional pressure during the compulsory counselling sessions. Around half did not get the suggested amount or quality of information. Only in rare occasions did the sessions affect the woman's decision. The blaming, manipulative, emotionally pressuring arguments and comments on the part of the so-called counsellors, however, made the sessions traumatic and difficult for many of the women.<sup>1</sup>

1. Research about compulsory abortion counselling in Hungary. ASTRA Network, Press statement, July 2014. <http://www.astra.org.pl/repronews/293-research-about-compulsory-abortion-counselling-in-hungary.html>.

### ***Death sentence for assisting woman with abortion complications and suspension by government of standards and guidelines, Kenya***

In 2010 Kenya adopted a new Constitution that affirmed, among other things, women's rights to reproductive health and access to safe abortion. This law is not being applied, yet the Ministry of Health acknowledges that unsafe abortion

remains a huge problem. In 2013, three years after the constitutional change, the Ministry of Health revealed that the number of induced abortions has continued to increase and was estimated to be more than 450,000 annually, up from an estimated 300,000 in 2002. Yet in 2013, the Ministry suspended their own Standards and Guidelines on Reducing Maternal Mortality and Morbidity from Unsafe Abortion, on the grounds of insufficient consultation.<sup>2</sup>

In September, a nurse was handed the death sentence in court for assisting a woman five years previously who came to his clinic bleeding after a botched illegal abortion. The case is currently being appealed by the National Nurses Association of Kenya and a group of reproductive health lawyers.<sup>1</sup>

1. Griffith ST. Why are women in Kenya still dying from unsafe abortions? Open Democracy, 20 January 2014. <https://www.opendemocracy.net/5050/saoyo-tabitha-griffith/why-are-women-in-kenya-still-dying-from-unsafe-abortions>.
2. Kenya: nurses appeal death sentence over abortion. The Star, 24 October 2104. <http://allafrica.com/stories/201410270228.html>.

### ***International human rights standards, reproductive rights and conscientious objection***

This toolkit explores international and regional human rights standards regarding conscientious objection and identifies standards applicable to conscientious objection in the health care context. The focus is on getting a balance between the state obligation to guarantee the right to freedom of conscience and women's rights to personal integrity, life, health, and autonomy. The toolkit includes fact sheets on three human rights systems – the universal, Inter-American and European systems. Each fact sheet addresses provisions relating to the right to freedom of conscience, standards on conscientious objection to military service (which can be used as precedent) and standards that apply to conscientious objection to reproductive health services.<sup>1</sup>

1. Center for Reproductive Rights. Conscientious objection and reproductive rights – international human rights standards. Center for Reproductive Rights, July 2013. [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/\\_Conscientious\\_FS\\_Intro\\_English\\_FINAL.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/_Conscientious_FS_Intro_English_FINAL.pdf)

### ***Surrogacy legislation in India***

This study draws on field research in Rajasthan, conducted over a six-month period in 2010 with infertile women, fertility specialists, gynaecologists, feminist activists and members of voluntary organisations. The study argues that the proposed Indian Assisted Reproductive Technologies (ART) Bill of 2010 (2008) uses a legal process to recognise the right to overcome infertility for some women, whilst perpetrating injustice toward others, especially poor women. The bill recognises the rights of infertile people to bear children and the rights of surrogate parents to be paid for their reproductive labour and expenses incurred during pregnancy, at an amount agreed privately between the surrogate and commissioning couple. However, the Bill applies Euro-American norms, rather than those experienced by surrogate mothers in rural India. For example, the Bill only permits surrogacy where the commissioning woman's eggs are used, and not traditional surrogacy, where the eggs of a donor or the surrogate woman are used, thus not recognising the process of gestation itself. For women in rural Rajasthan, men are viewed as creators of children at the point of procreation, while the woman becomes connected to the man's child through carrying the pregnancy. The surrogate's consent in the bill relies on provision of information to her and she is then presumed to make a free choice to carry the pregnancy. But this does not address the many social and cultural pressures on women who either cannot have children or who, for financial reasons, choose to be a surrogate. The proposed law entitles poor women to access quality medical health care only when they are surrogates, not when they are infertile. Legally guaranteed access to health services for surrogates thus becomes a privilege, where the rights of some individuals and couples to reproduce and exercise procreative agency are valued but not others.<sup>1</sup>

1. Unnithan M. Thinking through surrogacy legislation in India: reflections on relational consent and the rights of infertile women. *Journal of Legal Anthropology* 2013;1(3):287–313. Doi: [10.4059/jla.2013.2617](https://doi.org/10.4059/jla.2013.2617).

### ***Improving legal outcomes for sexual violence survivors, Democratic Republic of Congo***

A new smartphone app, MediCapt, currently being tested in the Democratic Republic of

Congo (DRC), could help doctors in areas of conflict better document injuries from sexual assault and rape in order to prosecute more cases of sexual violence. The app was developed by Physicians for Human Rights. Using a smartphone, doctors can photograph sexual assault victims' injuries and submit medical examination to an online database. Law enforcement officials in the DRC can then access the information and use it to help prosecute the hundreds of thousands of cases of sexual violence awaiting trial. One of many reasons why women do not report these crimes is the lack of confidence that any action will be taken. Doctors trained in using the app are already finding it a useful tool in their work.<sup>1</sup>

1. Greenwood S. New medical app hopes to help prosecute rape in war-zones. *Think Progress*, 11 July 2014. <http://thinkprogress.org/world/2014/07/11/3459162/app-rape-war-zones/>.

### ***Little hope of justice for war-time rape survivors, Nepal***

Nepal's May 2014 Truth and Reconciliation Commission Act has ruled out amnesty for rape perpetrated during the decade-long civil war that ended in 2006, yet the Criminal Code retains a 35-day statute of limitations on reporting rape. This effectively bars investigation and prosecution of rape in that era. Sexual violence survivors are also excluded from receiving relief packages that are provided to the families of conflict victims. They are also excluded from receiving psychosocial counselling, because rape and sexual violence are not included in the guidelines for these services. Documentation from the Transitional Justice Reference Archive, an Office of the High Commissioner on Human Rights-curated comprehensive database of violations committed during the war, indicate that state security forces committed most of the reported sexual violence crimes. Activists suspect it is a desire to shield army officials from punishment that has led the government to introduce ambiguous provisions relating to sexual violence. They also argue that the state needs to recognise rape during the conflict and that survivors deserve justice and reparation as a crucial part of ending sexual violence in Nepal today. Activist Renu Rajbhandari has been picketing in front of the Constituent Assembly

demanding amendment of the country's rape laws. She calls for medical exams in all districts, psychosocial counselling, listening to women's stories and giving them confidence.<sup>1</sup>

1. Little hope of justice for Nepal's war-time rape survivors. IRIN News, 31 July 2014. <http://www.irinnews.org/report/100423/little-hope-of-justice-for-nepal-s-war-time-rape-survivors>.

### ***Divorce in a context of domestic violence, Viet Nam***

Women who face domestic violence and want a divorce in Viet Nam experience obstacles in seeking and securing support for divorce. Findings are drawn from in-depth interviews with 66 ever-married women, 43 members of gender-based-violence support systems, and 8 focus group discussions with married women who participated in a 2006–2012 violence mitigation intervention. The Vietnamese Constitution, Law on Marriage and Family, and Land Law all provide for equal marital rights over property, land allotment and rent, yet by 2002 only 10–12% of the 12 million farmers who had been given land-use certificates were women. Barriers to women's land ownership leave considerable scope for abusive men to maintain control over marital property. Lack of property, in turn, puts divorcing women at a disadvantage in seeking child custody. Women may get legal aid but there are strict eligibility controls. The legal process to obtain getting a divorce is complex. A woman who seeks divorce must attend a reconciliation committee with her husband three times before the divorce can be considered by the local court. The 2007 Law on Domestic Violence Prevention and Control puts the responsibilities of victims of violence and their families ahead of the responsibilities of government. The government should adopt rights-based policies that strengthen women's property rights, provide legal support for domestic violence survivors, educate lawyers about domestic violence issues, strengthen law enforcement, and build the capacity of people involved in reconciliation committees and divorce.<sup>1</sup>

1. Vu HS, Schuler S, Hoang TA, et al. Divorce in the context of domestic violence against women in Vietnam. *Culture, Health & Sexuality* 2014;16(6):634–7. Doi: 10.1080/13691058.2014.896948.

### ***Removal of sexual orientation from “disease categories” in international standards***

The World Health Organization is revising the International Statistical Classification of Diseases and Related Health Problems (ICD), a compilation of health-related categories, globally used for diagnosis, monitoring and statistics, public policy, access to health care, reimbursement and other associated uses. The 11th edition, ICD-11, will be published in 2017. Currently, issues related to sexual orientation and gender identity are divided into a number of categories, mostly listed under “mental and behavioural disorders”. The Working Group on the Classification of Sexual Disorders and Sexual Health has found no evidence that these categories are clinically useful, as they neither contribute to health service delivery or treatment selection, nor provide essential information for public health surveillance. The Working Group has recommended that these categories be deleted entirely from ICD-11.<sup>1</sup> Transgender activists continue to advocate for de-pathologisation of transgender people, because health access and gender identity recognition are human rights and their realisation must not depend on diagnostic categories.<sup>2</sup>

1. Cochran SD, Drescher J, Kismödi E, et al. Proposed declassification of disease categories related to sexual orientation in the International Statistical Classification of Diseases and Related Health Problems (ICD-11). *Bulletin of World Health Organization* 2014;92:672–9. Doi: <http://dx.doi.org/10.2471/BLT.14.135541>.
2. Global Action for Trans\* Equality. New developments in the ICD revision process, 19 August 2014. <http://transactivists.org/2014/08/19/new-developments-in-the-icd-revision-process/>.

### ***Forced virginity testing and transgender abuses, Egypt***

Egypt's military government is using draconian anti-terror laws to control sexual expression. Reports of forced virginity testing of women continue, with a recent example of a woman forcibly “tested” in November 2014 when she accompanied a male friend to a police station after he had been summonsed on suspicion of committing a crime. On finding condoms in her bag, police threatened her with arrest as a prostitute and forcibly “examined” her vagina. Police also became involved when a woman was arrested

for alleged fraud, after seeking breast augmentation. Her state ID and birth certificate said she was female. She was reported to the police by the hospital doctor when it was discovered she had a penis and appeared to be intersex. These two cases are illustrations of sexual violence and control by a state that is deciding what is deviant in order to criminalise it.<sup>1</sup>

1. Virginity tests, vile bodies: stories from Sisi's Egypt. Paper bird. 11 November 2014. <http://paper-bird.net/2014/11/11/virginity-tests-egypt/>.

### ***Court case gives full recognition to gender variance, Lebanon***

In March 2014, a Lebanese court dismissed a case against a transgender woman who was accused of having a “same sex relationship with a man”, stating that homosexuality can no longer be considered a crime. International coverage has almost exclusively used the word “gay” to describe the relationship, which makes invisible the critical role a transgender woman played in achieving this landmark ruling. This is in part because of the wording of the ruling, which stated that “homosexuality is not illegal”. However, exclusion of transgender issues in the media coverage is also due to the tendency to associate gender differences with simplistic ideas about sexual preference, in a way that does not speak to – or do justice to – the complexities in the Lebanese court’s statement. The same ruling that decriminalised homosexuality also formally recognised gender variation and codified principles of self-identification. While critics have commented that the ruling falls short of tangible rights for homosexual people, in many ways it also far surpasses mainstream Western understandings of gender identity.<sup>1</sup>

1. Kilbride E. Lebanon just did a whole lot more than legalize being gay. Muftah. 8 March 2014. <http://muftah.org/lebanon-just-whole-lot-legalize-gay/#.VBI-3RaKW18>.

### ***Legal and constitutional rights of transgender people, India***

In April 2014, the Indian Supreme Court delivered one of the most rights-enhancing decisions in its history. The judgement recognises the legal and constitutional rights of transgender persons. It was based on two petitions, one by the National

Legal Services Authority and one by Poojaya Mata Nasib Kaur Ji Women’s Welfare Society, an organisation working with the transgender *kinnar* community. The judgement defines being transgender as “pre-operative, post-operative and non-operative transsexuals who strongly identify with persons of the opposite sex”. The judgement defines transgender as an umbrella category that includes those who identify as male-to-female, female-to-male, intersex and transsexual persons, as well as those who identify as members of transgender communities, such as *hijras*, *kothis* and eunuchs. The ruling states that the term “sex” must include “gender identity”, in order to prevent the direct or indirect oppression of people who consider themselves neither male nor female.

The constitutional right to equality is to apply to all persons, including those who identify as a third gender. The judgement recognises a third gender category for *hijras* or equivalent cultural identities in order to facilitate legal rights. It also states that transgender persons, for the purposes of the law, should be able to self-identify as the gender of their choice – male, female or a third gender category. The court’s ruling prohibits discrimination against transgender people in public spaces like hotels, public restaurants, roads, shops and places of public entertainment. The ruling also requires Central and state governments to take steps to treat transgender persons as a socially and educationally disadvantaged group, entitled to reserved places in educational institutions and public appointments. The ruling has implications for current laws related to marriage, adoption, inheritance, succession and welfare legislation that are currently based on male–female categories.<sup>1</sup>

1. Narrain S. (En)gendering a rights revolution: Siddharth Narrain. Kafiya, 16 April 2014. <http://kafiya.org/2014/04/16/en-gendering-a-rights-revolution-siddharth-narrain/>.

### ***Gambia criminalises and Palau decriminalises homosexuality***

In September 2014, Gambia passed a bill amending the criminal code to prescribe life sentences for “aggravated homosexuality”. The charge is intended for repeat offenders and people living with HIV, as well as those who engage in homosexual acts with someone who is under 18, disabled or has been drugged. Homosexual acts were already punishable

by up to 14 years in prison under a law that was amended in 2005 to apply to women in addition to men. The wording in the bill is very similar to Uganda's Anti-Homosexuality Act, which was overturned last month by that country's Constitutional Court on a technicality.<sup>1</sup>

On a positive note, in the Pacific nation of Palau, in April 2014, a new penal code was introduced which removed previous legal provisions that criminalised consensual same-sex sexual activity between men. The Palau government confirmed that it had engaged constructively with this issue following criticism by the UN Human Rights Council in its 2011 Universal Periodic Review (UPR). Palau accepted the UPR's recommendations to repeal all discriminatory provisions in domestic legislation criminalising consensual sexual activity and to combat discrimination against LGBT people through political, legislative and administrative measures.<sup>2</sup>

1. The Gambia passes bill imposing life sentences for some homosexual acts. Guardian, 9 September 2014. <http://www.theguardian.com/world/2014/sep/09/gambia-passes-bill-life-imprisonment-homosexual-acts>.
2. Palau decriminalises homosexuality. Human Dignity Trust, 15 October 2014. <http://www.humandignitytrust.org/pages/NEWS/News?NewsArticleID=300>.

### ***Publication: Interactive toolkit on sexuality and social justice***

This free interactive Toolkit for Sexuality and Social Justice seeks to strengthen rights and improve the lives of those marginalised because of their sexuality. The toolkit contains links to case studies and examples of different ways to approach or challenge policy and the law. It has many links to supportive reading, practical guides, articles, blog posts, video clips and images from a range of sources. Despite the global evidence that sexuality – and the efforts to define and control it – have a profound effect on people's everyday lives, funders and policymakers have been reluctant to acknowledge the diversity that exists in relation to gender and sexuality, and in how people understand themselves and their desires across contexts, geographic locations and throughout people's lifetimes. The toolkit maps out the different forms of legal systems addressing these issues (common, civil, customary, religious and plural law systems) across the world.<sup>1</sup>

1. Institute of Development Studies. Sexuality and Social Justice Toolkit, 2014. <http://www.spl.ids.ac.uk/sexuality-and-social-justice-toolkit>.



If I can't marry my boyfriend: demonstration outside the US Supreme Court re same-sex marriage